



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2015

CORAM:

WEB COPY

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

W.P.(MD)No.7701 of 2015

and

M.P.(MD)Nos.1 & 2 of 2015

Palaniappan

... Petitioner

Vs.

1.The District Collector,
Karur District, Karur.

2.The Thasildar,
Aravakurichi Taluk,
Karur District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Na.Ka.No.A2/4533/2014, dated 27.02.2015 passed by the 2nd respondent and quash the same and consequently, direct the 2nd respondent to issue patta to the petitioner in respect of Thatched Shop and house situate at S.No.704, Esanatham Village, Aravakurichi Taluk, Karur District.

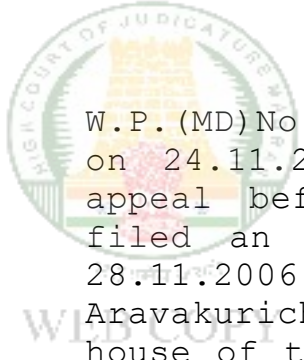
For Petitioner : Mr.Sakthi Kumaran

For Respondents : Mr.S.Kumar, AGP

ORDER

This Writ petition has been filed to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Na.Ka.No.A2/4533/ 2014, dated 27.02.2015 passed by the 2nd respondent, quash the same and consequently, direct the 2nd respondent to issue patta to the petitioner in respect of the property situate at S.No.704, Esanatham Village, Aravakurichi Taluk, Karur District.

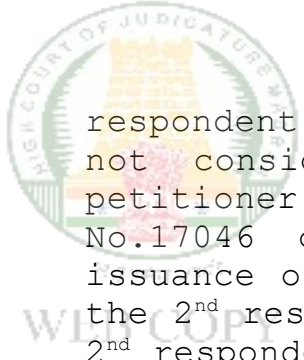
2.The case of the petitioner is that the petitioner is residing in the above said address for the past 31 years and also running a Tea shop in the said property. He has been paying tax and electricity bill for the said property. Due to some dispute between Panchayat President and the petitioner, an eviction notice has been issued to the petitioner and the same has been challenged by filing a Writ petition before this Court in



W.P.(MD)No.6892 of 2005 and this Court dismissed the Writ petition on 24.11.2005 and directed the petitioner to file a statutory appeal before the 1st respondent. Accordingly, the petitioner filed an appeal before the 1st respondent on 29.11.2005. On 28.11.2006 the Assistant Divisional Engineer, Highway, Aravakurichi, without issuing notice, removed the tea shop and the house of the petitioner. Thereafter, the petitioner filed a Writ petition in W.P.(MD)No.11671 of 2006 seeking a direction directing the Assistant Divisional Engineer, Highway, Aravakurichi, to restore the tea shop and the house of the petitioner in Survey No.704, Esanatham Village, Aravakurichi Taluk, Karur District. This Court by an order dated 31.01.2007 directed the Assistant Divisional Engineer to install the shop and house of the petitioner. As the Assistant Divisional Engineer has not chosen to install the shop and the house, the petitioner installed the shop and house at his cost. In the mean time, the Assistant Divisional Engineer, Highway, filed a Review Petition before this Court in Rev.Applc.No.48 of 2007 and the same is pending. On 14.02.2011 the Assistant Divisional Engineer, Highway, issued an eviction notice dated 14.02.2011 without issuing show cause notice. Aggrieved over the same, again the petitioner filed a Writ petition in W.P.No.2238 of 2011. This Court by order dated 18.07.2011 treating the eviction notice as show cause notice and directed to give objection within 7 days. Accordingly, the petitioner submitted his explanation on 01.08.2011. The Assistant Divisional Engineer, Highways without considering the explanation of the petitioner ordered eviction order on 22.08.2011. Once again the petitioner filed a Writ petition in W.P.(MD)No.9748 of 2011 challenging the said eviction order. This Court by an order dated 26.08.2011 set aside the impugned order of eviction and remitted the matter back to the Assistant Divisional Engineer, Highways, Aravakurichi for fresh consideration.

3. Again the Assistant Divisional Engineer, Highways, Aravakurichi passed another eviction order on 12.10.2011 without considering the explanation of the petitioner. This eviction order also challenged by the petitioner by filing a Writ petition in W.P.No.11889 of 2011 and this Court by an order dated 18.10.2011 set aside the eviction notice dated 12.10.2011 and remitted the matter back to the Assistant Divisional Engineer, Highways for fresh consideration. This time also the Assistant Divisional Engineer, Highways without considering the explanation of the petitioner passed yet another eviction order. Being aggrieved over the same, the petitioner filed a Writ petition in W.P.(MD)No.6688 of 2012 and this Court granted an order of interim stay on 09.05.2012.

4. The grievance of the petitioner is that the petitioner was issued a housing card under the scheme of Kalaigarnar Housing Scheme. As the petitioner is residing in the said place for more than 30 years, he sent a representation dated 07.08.2013 to the 2nd



respondent for issuance of patta. However, the 2nd respondent has not considered the request of the petitioner. Hence, the petitioner was constrained to file a Writ petition in W.P.(MD) No.17046 of 2014 seeking a direction to the respondent for issuance of patta. This Court by order dated 05.09.2014 directed the 2nd respondent to consider the request of the petitioner. The 2nd respondent by an impugned order 27.02.2015 rejected the request of the petitioner. Aggrieved over the said impugned order, the petitioner has filed the present Writ petition for the aforesaid relief.

5.The 2nd respondent has filed a counter affidavit. In the counter affidavit the 2nd respondent has stated that as per the revenue records the property in question is a road poramboke. It is submitted that after verifying the revenue records and after conducting field inspection, the impugned order has been passed. The Survey No.704 is entered as road poramboke in which, the petitioner has encroached upon 51 sq.meters and the said land was in the junction point of two highways namely, Karur - Dindigul Highways and NH-7 to Easanatham Highways road. The 2nd respondent by a communication dated 09.02.2015 asking the Assistant Divisional Engineer Highways, Aravakurichy for grant of patta in favour of the petitioner. However, the Assistant Divisional Engineer Highways, Aravakurichy has strongly objected by a communication dated 23.02.2015. Hence, for issuance of patta in favour of the petitioner for the land in question is rejected on merits. It is further stated that as the petitioner had an alternative remedy to file an appeal before the Revenue Divisional Officer, Karur nor to the District Revenue Officer, Karur, the present Writ petition is not maintainable.

6.Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

7.Admittedly, as per the revenue record, the land in Survey No.704 is classified as road poramboke. The Assistant Divisional Engineer Highways, Aravakurichy by the communication dated 23.02.2015 has clearly stated that the land is situated in junction point of two highways and in future the said land is required for the purpose of widening the road. When the land is under the control of the Assistant Divisional Engineer Highways, Aravakurichy, and the said authority has strongly objected for granting patta in favour of the petitioner, there is no legal right for the petitioner to claim right over the said property since he is an encroacher. Further, it is made clear that as against the impugned order of the 2nd respondent, the petitioner is having a right to file an appeal before the Revenue Divisional Officer, Karur or to the District Revenue Officer, Karur. The Court cannot compel the 2nd respondent to issue patta in favour of the petitioner as he has no legal right.



8. In view of the above, the petitioner is directed to work out his remedy before the appropriate authority by way of an appeal.

9. At this juncture, the learned counsel for the petitioner submitted that the petitioner will file an appeal before the appropriate authority and till such time, an interim protection may be granted.

10. Already this Court has granted in an order of interim stay of the eviction order in W.P.(MD)No.6688 of 2012 and the same is in force, there is no need for this Court to give a separate protection.

11. Accordingly, the Writ petition fails and the same is dismissed. No costs. Consequently, connected M.Ps. are closed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

nbj

To

1. The District Collector,
Karur District, Karur.

2. The Thasildar,
Aravakurichi Taluk,
Karur District.

+1CC to Mr.K.Seemaraj Advocate Sr.No.52076

+1CC to Spl.Government Pleader Sr.No.51256

GJM/AN/MP/29.9.15-4P-5C

W.P. (MD) No.7701 of 2015

04.09.2015